

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

Chapter 11
IN RE:
Case No. 18-10512 (KBO)
ZOHAR III CORP., *et al.*,
Debtors.

BLANK ROME LLP, FFP (CAYMAN)
LIMITED, MAPLES AND CALDER
MAPLESFS LIMITED, MORRIS,
NICHOLS, ARSHT & TUNNELL LLP,
GARY NEEMS, AND QUINN EMANUEL
URQUHART & SULLIVAN LLP,

Plaintiffs.

v.

Adv. Proc. No. 19-50273

ZOHAR CDO 2003-1 CORP. AND
ZOHAR CDO 2003-1 LIMITED
ZOHAR CDO 2003-1, LIMITED;
ZOHARII 2005-1, LIMITED; AND
ZOHAR III, LIMITED,

Plaintiffs.

v.

Adv. Proc. No. 20-50534

PATRIARCH PARTNERS, LLC;
PATRIARCH PARTNERS VIII, LLC;
PATRIARCH PARTNERS XIV, LLC;
PATRIARCH PARTNERS XV, LLC;
PHOENIX VIII, LLC; OCTALUNA LLC;
OCTALUNA II LLC; OCTALUNA III,
LLC; ARK II CLO 2001-1, LLC;
ARK INVESTMENT PARTNERS II, LP;
ARK ANGELS VII, LLC; PATRIARCH
PARTNERS MANAGEMENT GROUP, LLC;
PATRIARCH PARTNERS AGENCY
SERVICES, LLC; AND LYNN TILTON,

Courtroom No. 1
824 North Market Street
Wilmington, Delaware 19801

Defendants.

April 21, 2020
1:30 P.M.

1 TRANSCRIPT OF TELEPHONIC HEARING
2 BEFORE THE HONORABLE KAREN B. OWENS
3 UNITED STATES BANKRUPTCY JUDGE

4 TELEPHONIC APPEARANCES:

5 For the Debtors: Michael Nestor, Esquire
6 Drew Magaziner, Esquire
7 Ryan Bartley, Esquire
8 Robert Brady, Esquire
9 Joseph Barry, Esquire
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Los Angeles, California 90071

For Mr. Farnan: Christopher Shore, Esquire
WHITE & CASE
1221 Avenue of the Americas
New York, New York 10020

1 MATTERS GOING FORWARD:

2 **#12)** Patriarch Stakeholders' Motion to Amend the Court's
3 March 30, 2020 Order [(SEALED) D.I. 1553; 4/2/20; (REDACTED)
D.I. 1579; 4/15/20]

4 **Ruling: 18**

5
6 **#10)** Debtors' and Independent Director's Joint Emergency
7 Motion for Entry of an Order Declaring that the Debtors
Control the Portfolio Companies and Granting Related Relief
8 [(SEALED) D.I. 1505; 3/23/20; (REDACTED) D.I. 1599; 4/16/20]

9 **Ruling: Adjourned**

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1 (Telephonic proceedings commence at 1:31 p.m.)

2 THE COURT: Counsel, this is Judge Owens. Thank
3 you very much for appearing telephonically today. I
4 understand we have two substantive motions to address today.

5 So, why don't I turn it over for counsel for the
6 debtors to take us through the agenda today. I'm sorry, is
7 counsel for the debtors on the line?

8 MR. BARRY: He may have gotten disconnected. I
9 think we had this issue in the past. I will -- if I could
10 ask the court for a moment I will try and reach him.

11 THE COURT: Okay. Is this Mr. Barry?

12 MR. BARRY: Its Joe Barry, Your Honor, for the
13 record.

14 MR. NESTOR: Can you guys hear me?

15 THE COURT: Mr. Nestor, yes. This is Judge Owens.

16 MR. NESTOR: Can you hear me?

17 THE COURT: I can hear you. This is Judge Owens.
18 Can you hear me?

19 MR. NESTOR: Yeah, I can. Sorry about that. I
20 actually picked up the phone to talk so it would be clearer.
21 I put it back on the box. It seems like there must be a
22 problem with my phone. I apologize.

23 THE COURT: Not a problem. I thought maybe I was
24 not connected to the line. So, that's the explanation of why
25 it was silent for so long.

1 Thank you for joining. Why don't you take us
2 through the agenda today.

3 MR. NESTOR: Thank you, Your Honor.

4 I wanted to give you two points and a suggestion
5 with respect to this hearing. First, did you get the number
6 identification that I had emailed to your Chambers for the
7 five portfolio companies?

8 THE COURT: Yes.

9 MR. NESTOR: Okay. I wanted to let you know, just
10 as an update, with respect to number two; the debtors had
11 noticed up a shareholder meeting with respect to filling the
12 sole director of that company. Ms. Tilton has also noticed
13 up a shareholder meeting for the same purpose. But I wanted
14 to let you know that the meeting did occur, the votes were
15 tallied, and the debtors candidate was selected as the sole
16 member -- as the sole director of number two.

17 Again, preliminarily, and this is just the debtors
18 perspective, there have been allegations of false
19 emergencies, rushing to court, et cetera, and we want to be
20 clear with Your Honor that we don't view anything that we do
21 before the court lightly. We certainly don't come to you on
22 what we would call false. The debtors bring issues to Your
23 Honor based upon our judgment regarding the needs that are
24 required and when we need your judgment on an issue.

25 So, fortunately the relief that we're seeking

1 today is not emergency relief because it was sent out and
2 filed on regular notice. We just wanted you to know from our
3 perspective that we don't take lightly coming to Your Honor
4 for decisions and if we do so on an emergency fashion it's
5 because we believe that that's what's required.

6 There are two motions that are pending, two
7 pleadings pending before the court. The first is the debtors
8 -- it was the debtors underlying emergency motion that was
9 filed the week of March 23rd. You denied that without
10 prejudice, and so we filed a second supplement to seek very
11 narrow relief with respect to one portfolio company. That is
12 Item No. 10 on the agenda.

13 Item No. 12 on the agenda is Patriarch's motion to
14 amend Your Honor's order of March 30th. And I will defer,
15 obviously, to you and Ms. Loseman, if she's arguing this. It
16 may make sense to start with that motion because it may
17 address some of the issues that we will be discussing in the
18 context of Item No. 10. So, my recommendation would be to,
19 at least, start with that motion and then come back to Item
20 No. 10.

21 THE COURT: Okay. This is Judge Owens. I was
22 actually thinking the same thing. I would like to take the
23 motion to amend, which after reading the pleadings, appears
24 that the relief sought has been very narrowly focused.

25 So, Ms. Loseman or counsel for Patriarch, why

1 don't we address that matter first and I'll allow you to
2 present it in the first instance.

3 MS. LOSEMAN: Thank you, Your Honor. This is
4 Monica Loseman on behalf of Ms. Tilton and the Patriarch
5 stakeholders. That order certainly makes good sense to us.

6 So, as to the motion to amend, Your Honor, we are
7 before you on what we believe is a fairly simple limited
8 motion to clarify the March 30th order entered by this court.
9 Debtors take the position that the court's entry of its order
10 on March 30th constitutes a finding, an implicit finding,
11 that the rescissions on March 26th are ineffective and that
12 the five companies were without a director or manager through
13 a transition period.

14 The debtors take this position despite the fact it
15 was debtors that asked for help, seemingly asked for help,
16 complaining that those companies needed transitional
17 leadership and were left without governance until the parties
18 could elect replacements. They take this position despite
19 the fact that Ms. Tilton has continued to provide leadership
20 to those companies, with no compensation, in order to address
21 debtors' concerns that the business, in fact, needed that
22 transitional leadership. She has provided that leadership
23 and the companies have continued to operate in the normal
24 course and continue to prepare for the sales processes
25 consistent with this court's order on the timeline motions.

1 The debtors, unfortunately, take this position
2 despite the fact that Mr. Katzenstein continues to meet with
3 Ms. Tilton to discuss and work towards a transition and that
4 Mr. Katzenstein receives updates on the company's operations
5 and their activities to prepare for a sales process
6 consistent with the timeline ordered by this court. The
7 debtors' counsel take this position despite the fact that the
8 rescissions were clearly effective only until such time as
9 replacements would be appointed. Ms. Tilton, unfortunately,
10 it seems, can do no right in debtors' view.

11 So, why is there a need for clarity that this
12 court did not implicitly rule on the effectiveness of the
13 rescissions. Let's the series of events in the transfer of
14 leadership at Portfolio Company 2 as an example.

15 As Mr. Nestor noted, the company held a special
16 meeting where the debtors' director was elected just
17 yesterday. The company had actually noticed an annual
18 meeting of shareholders for May 15th at which time the
19 director would be elected. The debtors, however, wanted a
20 meeting sooner and they sent a notice of special meeting for
21 April 21st; however, debtors notice and special meeting was
22 sent pursuant to a provision of the bylaws applicable only
23 where there is a director absent.

24 On behalf of the Ark and any IP entities that hold
25 approximately 42 percent of the equity in that company we ask

1 debtors to simply revise their notice of special meeting and
2 include a reference to a different provision of the bylaws
3 applicable to a replacement of a seated director. The
4 debtors refused. There were actions taken by the company and
5 approved by Ms. Tilton during this transitional period,
6 actions that Ms. Tilton discussed with Mr. Katzenstein and
7 with which he concurred in her role as director during that
8 transition.

9 Debtors' insistence that this court has ruled on
10 the effectiveness of the rescissions could leave questions as
11 to the validity of those actions. Rather than waste
12 resources, by the way, litigating the issue, Ms. Tilton
13 caused the Patriarch stakeholders that own equity in that
14 company to also request a special meeting for the same date
15 and time for the purpose of electing a replacement director.
16 That is how the special meeting that occurred yesterday came
17 about. And debtors' candidate was elected.

18 Now we hope for the same relatively smooth
19 transition to a new director or manager of leadership as to
20 the other companies as well. There should be no ambiguity
21 about leadership during the transitional period.

22 Let me address the procedural issue raised in the
23 briefing briefly. We do not seek to modify or seek any
24 reconsideration of the court's March 30th order. We seek
25 only a clarification that this court did not rule, did not

1 even receive briefing or hear argument on the effectiveness
2 of the rescission. And the mechanism for clarifying the
3 order is Rule 9023. The standard is not so high, as debtors
4 suggest, for this court merely to clarify its prior order.
5 This court can use Rule 9023 to do so without reaching the
6 standards debtors suggest. And there is clear precedent we
7 have cited including the Nortel case where Judge Gross
8 invoked this very rule to clarify an order.

9 Now let me address, briefly, debtor's view
10 regarding the motivation for the motion to amend. That
11 conspiracy theory, frankly, is out of left field. Debtors
12 have developed this theory that the purpose, the secret
13 purpose of this very limited motion to amend is to allow Ms.
14 Tilton to replace her personal role with that of an
15 independent person with industry experience all in an effort
16 to somehow delay the sales process. Debtors once again make
17 radical factual allegations without a scintilla of support.

18 If Ms. Tilton and Mr. Katzenstein were to testify
19 we believe the court would find no support whatsoever for
20 this conspiracy theory. And even setting aside the utter
21 absence of any factual support for that theory the debtors'
22 theory is illogical. If debtors' true concern is adhering to
23 this court's timeline order then granting the motion to amend
24 is actually in debtors' stated interest. It merely maintains
25 a status quo and the companies continue to prepare for the

1 monetization process consistent with the court's order.

2 According to debtors read of the settlement
3 agreement Ms. Tilton will continue to be bound by its terms
4 so long as she continues to fulfill the manager/director role
5 at these companies through the transitional period. And
6 setting aside interpretations of the settlement agreement or
7 legal arguments on that point we agree it is preferable that
8 Ms. Tilton remain in these roles during the transition
9 process so that the companies can continue to make progress
10 with the monetization process.

11 In the short few weeks Ms. Tilton has continued to
12 provide transitional leadership. And as Mr. Katzenstein
13 would have to admit she has moved the companies forward in
14 the marketing process, utterly cognizant of the deadlines
15 imposed by the court. And once new leadership is elected the
16 expectation is that they will simply pick-up that process and
17 continue to move it forward.

18 Debtors want to create this sense of an emergency
19 in the hopes that doing so will persuade this court to
20 foreclose the Patriarch stakeholders from exercising their
21 equity and lender rights in the portfolio companies. They
22 insist, for example, that the five companies are without
23 governance in order to complain about the absence of
24 leadership, hoping to persuade the court an emergency exists
25 that justifies wholly foreclosing the Patriarch stakeholders

1 voting rights. I will address that more with respect to the
2 second supplement and in response to debtors opening remarks
3 on that matter, but it's not really relevant to the motion to
4 amend.

5 Permitting debtors to imply to third-parties that
6 the court implicitly ruled that the rescissions were
7 ineffective only leaves the five or now four companies
8 without leadership through the transition period. What we
9 seek through the motion to amend should be a shared goal of
10 the parties; maintaining a status quo as to governance only
11 until such time as replacements are dually elected for the
12 four remaining companies. That is all we ask of the court; a
13 clarification that the March 30th order did not constitute a
14 ruling on the rescission question.

15 That question was not at issue at the March 26th
16 argument, it was not briefed, it was not argued and the only
17 reason the rescissions even came about was debtors' complaint
18 that certain companies might be left without transitional
19 leadership. Ms. Tilton answered their concern by,
20 essentially, agreeing to maintain the status quo; continue as
21 director and manager, pushing the monetization process
22 forward only until such time as replacements are dually
23 elected. She has and will continue to do so. We simply ask
24 the court to amend its order to make clear it did not somehow
25 implicitly rule the limited rescissions were ineffective.

1 Thank you, Your Honor.

2 THE COURT: Thank you.

3 Mr. Nestor?

4 MR. NESTOR: Thank you, Your Honor. Can you hear
5 me?

6 THE COURT: I can.

7 MR. NESTOR: Thank you.

8 Your Honor, a couple things at the outset. One,
9 the debtors never asked Ms. Tilton to rescind her
10 resignations. Ms. Tilton apparently did not understand the
11 implication of her decision. So, when we filed the
12 supplement with the court we noted that as a basis for the
13 debtors needing to take control, not for Ms. Tilton to then
14 rescind her resignation at those companies. They were
15 without leadership because of her unilateral action and the
16 debtors took action immediately to fix that. And it's
17 uncontroverted in the record, Judge.

18 The Monday after Ms. Tilton gave her notice the
19 debtors sent a consent that said please provide us with the
20 control, the leadership, and the stability that you committed
21 to give us under your letter. She said no. So, we were left
22 with no alternative but to file the motion.

23 With respect to the compensation issue, Judge, Ms.
24 Tilton does get \$100,000 dollars a month and each of these
25 portfolio companies is either paid or accrued, but the

1 services being provided aren't free. And despite counsel's
2 attempts to testify from the phone regarding facts that
3 aren't relevant to this proceeding the debtors took action,
4 Judge, consistent with the letter that was filed, and we'll
5 get to that, that she sent to the debtors on March 21st and
6 was filed with the court.

7 The order that was entered, Judge, was the result
8 of a hearing that was conducted before Your Honor. We had a
9 hearing on March 26th and Your Honor instructed the parties
10 to submit Ms. Tilton's order and to add a provision that
11 required her reasonable and good faith in terms of delivering
12 ownership and control of the portfolios to the debtors
13 consistent with the representations in her letter.

14 Now, with respect to the relief that's requested,
15 Judge, this very easily have been disposed of on or before
16 March 30th. We sent the order. We had a dispute with
17 Patriarch regarding the order. And this is something that
18 likely and should have been done then because the same issues
19 were at play at that time.

20 From our perspective, Judge, the resignations with
21 respect to these five companies, now four companies, was
22 effective immediately pursuant to Ms. Tilton's own letter and
23 her own letters referenced to applicable law and the
24 applicable agreements. Once she resigned she lacked the
25 ability to rescind and Patriarch sites no case in support of

1 that proposition. There is nothing in the agreements which
2 were filed with the court and there's nothing under
3 applicable law that supports that position. In short, Your
4 Honor, there's (indiscernible). You don't get to resign,
5 send everyone notice of your resignation, make clear that
6 it's automatic upon receipt and then change your mind five
7 days later.

8 THE COURT: Well, listen, Mr. Nestor, I know that
9 that is your argument on the substantive issue. Presumably,
10 you know, we're going to get to it, depending on how I rule
11 on this motion, of course, we're going to get to it in the
12 next motion.

13 MR. NESTOR: Yes.

14 THE COURT: With respect to the motion to amend, I
15 mean, to you agree that I did not make a decision with
16 respect to the rescissions on March 30th?

17 MR. NESTOR: Well, Your Honor --

18 THE COURT: I mean, let's just save one issue out
19 of time. I'm not saying I made a decision. I'm just saying
20 do you agree that we didn't discuss or it or I didn't make a
21 ruling and there needs to be some sort of ruling or do you
22 disagree because that is really the focused issue that we're
23 talking about momentarily in the motion to amend.

24 MR. NESTOR: Correct, Your Honor. So, a couple of
25 things.

1 So, the motion that was filed by Patriarch started
2 off under 59(e) and then they flipped to 60(b) in their
3 reply. And I think we have to -- so, one, all of these facts
4 were in the record on March 26th. Ms. Tilton filed a
5 pleading with the court stating that she rescinded her
6 resignation with respect to these five companies prior to the
7 hearing. I think it was an hour before the hearing, and it
8 was addressed at the hearing on the call with Your Honor.

9 So, everything that we're talking about now, all
10 of these facts were in the record, both the docket and the
11 transcript, at the hearing that was conducted by Your Honor
12 on March 26th. And at the conclusion of that hearing we did
13 exactly what you asked us to do. You said take Ms. Tilton's
14 order and add this paragraph. That is what we did.

15 Our position was, in fact, that she had resigned
16 and that she's incapable of un-resigning under the applicable
17 documents. We both, respectively, briefed this issue. It's
18 before you today. We think you can decide that on the
19 merits, but our position is under Rule 59(e) they haven't
20 made their case. What they do is they site the rule and site
21 some facts, but they never connect the dots on tying the
22 facts to the rule. And what it requires, what cases have
23 said is you need an intervening change of law, we don't have
24 that. We have availability of new evidence, we don't have
25 that. And we have the need to correct clear error of law or

1 manifest injustice. The debtors don't have that, it hasn't
2 been alleged.

3 With respect to Rule 60(b) same sort of issues
4 except, you know, most of them don't apply. Mistaken
5 inadvertence, or excusable neglect, first, second, newly
6 discovered evidence, third fraud, fourth is the judgment
7 void, fifth has the judgment been satisfied, and sixth any
8 other reason that justifies the relief. I assume that is
9 what they are relying on, but it is unclear from their
10 papers.

11 From the debtors' perspective we were at the
12 hearing on the 26th. They actually filed a pleading noting
13 that Ms. Tilton had rescinded her resignations. We had the
14 hearing and Your Honor instructed us to file an order, you
15 know, that we filed ultimately and that Your Honor,
16 ultimately, entered. So, we would suggest that, in fact, the
17 order did address this issue, the effectiveness of the
18 resignations, that was the heart of the ruling which was
19 important from the debtors' perspective.

20 And we don't think -- we think either you did so
21 understanding the issues that were being discussed or that it
22 should not be an issue as a matter of law because Ms. Tilton
23 is incapable under the applicable documents of rescinding her
24 resignation and reinserting herself back after she has
25 resigned effective immediately upon delivery.

1 THE COURT: Okay. Well, listen, I'm just going to
2 cut right to the issues. I don't want to waste time on this.
3 The motion to amend is very narrow. I am prepared to make
4 the clarification.

5 I think that my order was very clear and that
6 there was no ruling on the rescissions. I did not make any
7 such ruling on the record or in the order. And I did not
8 intend to do so. So, I am prepared to make that
9 clarification. But to be clear I made no determination as to
10 the effectiveness or ineffectiveness of Ms. Tilton's letters
11 rescinding her resignation.

12 So, that is an open issue. And you teed up one
13 motion to address it at Company One. That is the next
14 matter. So, let's just go ahead and deal with it now.

15 MR. NESTOR: Thank you, Your Honor. I appreciate
16 that.

17 So, Your Honor, we're at Item Number 10 on the
18 agenda, the debtor's motion through a second supplement to
19 insert itself and have you compel Ms. Tilton to insert
20 herself -- to insert the debtors as the managing member of
21 Portfolio Company No. 1.

22 Your Honor, we've been through this before, Ms.
23 Tilton's resignation on March 21st was the day after you
24 ruled on the monetization procedures and guidelines. And she
25 purports to say that that had nothing to do with it. At that

1 time she resigned from all positions at all of the Group A
2 and Group B portfolio companies. And we will get to those
3 statements in that letter shortly.

4 It's important to note, Your Honor, that this was
5 done without any notice to anyone including Your Honor. If
6 we turn back to -- again, this is the, you know, sworn
7 testimony of Ms. Tilton in connection with that trial. She
8 testified over two days and never indicated to anyone that
9 she intended to resign. In fact, it was the opposite, Your
10 Honor.

11 I would like to talk about a few of these
12 statements. Page 91, Lines 15 through 20 she states that,

13 "In the end it's important to me to maximize value
14 for all constituencies to find the right buyer that will take
15 care of my people and the customers and vendors, and all the
16 people that we have built relationships with, and to make
17 certain that that process is successful."

18 Page 150, Lines 23 through Page 151, Line 4,

19 "I expect that I will be deeply involved with the
20 management meetings of potential buyers since I'm the only
21 one with the history and much of the management is new trying
22 to maximize value for this company."

23 Page 208, Lines 20 to 23,

24 "My intention is to do everything possible to
25 market this company properly, and maximize value and get a

1 robust price that I can sell at."

2 Page 211, Lines 6 through 20,

3 "It's important to me to be deeply involved in the
4 process and the management meetings, I mean this company.
5 Everybody will be new and just hired. So, I will be the only
6 one who can sit in management meetings with the history of
7 operations to market the company."

8 Last, Your Honor, Page 339, Lines 4 through 6,

9 "But I will work, as I have since the start of
10 this process, tirelessly and with my full attention."

11 So, Judge, she resigned without any notice
12 contrary to her statements before Your Honor, sworn
13 testimony, a month before. On March 23rd the debtors
14 immediately sent Ms. Tilton, and, again, uncontroverted in
15 the record, a consent that would have fulfilled her
16 commitments under her resignation letter and delivered
17 ownership, control and leadership to the debtors. It was
18 rejected that day and we were forced to file the motion with
19 Your Honor.

20 Having resigned, effectively, as of March 21st Ms.
21 Tilton then, on the 26th, the day of the hearing, purported
22 to rescind it apparently after reading the debtors' pleading
23 and then understanding the ramifications of her decision, but
24 she only did that with respect to the five companies where
25 she has an economic interest in the form of debt and/or

1 equity.

2 So, Your Honor, we had the hearing on the 26th.
3 You granted in part and denied in part the relief that was
4 requested by the debtors, but it's important to look at
5 exactly what you said. You said,

6 "I do feel it appropriate to add a provision to
7 Ms. Tilton's proposed order that requires Ms. Tilton and the
8 other Patriarch stakeholders shall work reasonably and in
9 good faith with the debtors to transition ownership and
10 control of the portfolio companies as set forth in the
11 resignation letter."

12 Then, you noted further that,

13 "I do believe her representations are genuine and
14 I will give her the chance to accomplish and live up to that
15 statement."

16 THE COURT: Mr. Nestor, I'm going to interrupt you
17 because I know what I said. Everybody, both sides, loves to
18 quote me, loves to fill their motions with things that I
19 said. I know what I said, I remember what I said. What's
20 important is that at the time that we had that hearing there
21 was -- Patriarch made it clear or Ms. Tilton's counsel made
22 it clear that she was not transferring ownership or control
23 rights that she had due to her personal investments. So,
24 that is really the issue here, at least I think that the
25 issue here.

1 So, why don't we talk about that? Why in some way
2 is that not the correct framing of this issue and why aren't
3 we focusing on that?

4 MR. NESTOR: Thank you, Your Honor. I will focus
5 on that. I appreciate that.

6 So, in that regard, Your Honor, so let's then look
7 at what Ms. Tilton said to us, to you and to all the
8 portfolio companies.

9 Her resignation letter is not -- well, first of
10 all, our position is that at this portfolio company, and this
11 issue is teed up in the context of this motion, that Ms.
12 Tilton has, in fact, resigned at this company and her
13 position has not been filled. If you look at she tendered
14 her resignation to the debtors, to the company and it set
15 forth that it was effective immediately upon receipt.

16 If you look at Section 5.9 of the LLC agreement it
17 states resignation by the manager will take effect at the
18 time specified in the resignation or if no time specified at
19 the time of its receipt by any common member. So, the
20 debtors received that on March 21st. We believe it was
21 effective as of the 21st. And the documents speak to absent
22 an order of this court how that spot gets filled.

23 It's important, Judge, this wasn't just a
24 resignation letter, a one liner that says I resign and move
25 on. The letter went into extreme detail in terms of her

1 commitments, the basis, the clarity and the implications of
2 her resignation. She stated,

3 "I know that I can no longer effectively lead the
4 companies forward into the future."

5 She stated,

6 "As the Zohar's control the future of these
7 companies I feel I can no longer continue my roles."

8 She stated again that it was effective immediately
9 and under the express terms of the LLC agreements and the
10 shareholders agreements,

11 "Such resignation is deemed accepted upon
12 receipt."

13 She stated that she believed her resignations are
14 in the best interest of all constituencies.

15 She stated that,

16 "It's only more important to the portfolio
17 companies are not caught in the middle of constituency
18 conflict."

19 She stated that the portfolio companies will need,

20 "Unilateral support, relief, capital and attention
21 presumably from the debtors."

22 And in closing she said,

23 "I will, of course, reasonably cooperate with your
24 new leadership to accomplish this transition."

25 So, Judge, from the debtors' perspective Ms.

1 Tilton promised -- she resigned effective immediately,
2 vacating all those positions at dozens of portfolio
3 companies. At this company in particular, the one we're
4 talking about today, she is incapable of rescinding it.
5 Under applicable law Patriarch provides no support for the
6 ability to rescind that resignation. It's effective upon
7 receipt and its effective consistent with the applicable LLC
8 agreement.

9 The debtors, in response, offered themselves as
10 the Zohar III Corp, as proposed managing member, Judge. A
11 debtor in these cases who is subject to the oversight and
12 jurisdiction of this court. Ms. Tilton has objected to that
13 stating that she is still the manager. She stated that you
14 need industry experience and that she needs an additional
15 four to six weeks, not from the date of resignation, from the
16 filing of her pleading, to find an acceptable candidate,
17 imposing necessarily a month long delay into this process.

18 THE COURT: Well, let me interrupt you because I
19 want to be clear. I want to make sure that I understand. My
20 understanding is, and please correct me if I'm wrong, Mr.
21 Nestor, and Ms. Loseman can chime in when it's here time, but
22 she -- I believe that the papers reveal that she objected to
23 the appointment of Zohar III not because she is the manager,
24 but because she holds common shares, through an affiliate,
25 and she has the right to consent under the LLC agreements.

1 MR. NESTOR: It's both, Your Honor.

2 THE COURT: So, even if the manager is empty she
3 still has the ability as a common member to vote on the
4 replacement. Is that my understanding wrong?

5 MR. NESTOR: Can you hear me, Your Honor?

6 THE COURT: Yes.

7 MR. NESTOR: I think she has taken both positions
8 that she is the manager and there is no need to replace her,
9 and that she has the right -- you know, essentially, you need
10 unanimity to elect it and she doesn't consent.

11 THE COURT: Okay. Let's focus on the unanimous
12 vote. I understand your position with respect to whether Ms.
13 Tilton, effectively, reinstated herself as manager. I
14 certainly understand that, but let's put that aside. Explain
15 a little bit more into your position as to why the parties do
16 not need to have unanimous consent.

17 MR. NESTOR: Well, I mean the fact of the matter
18 is, Judge, we don't -- the argument is that it requires
19 unanimous consent and that requires unanimity which requires
20 all common holders to consent. And Ms. Tilton does not
21 consent to the debtor's representatives. So, at this point
22 we don't have -- we're in a deadlock in terms of next steps.
23 In connection with -- by the way, we just keep coming back to
24 either her letter that was tendered to the debtors and given
25 to the court has some meaning or it doesn't.

1 From the debtors' perspective what Ms. Tilton has
2 done is pulled the carpet out from everybody, resigned at all
3 these companies, and now purported to rescind which we think,
4 as I said and its set forth in our papers, is incapable of
5 being done under the underlying LLC agreements and applicable
6 law.

7 From the debtors' perspective her decision and the
8 refusal of the Ark entities to consent to the debtors in
9 these cases, whose job is to sell and realize value for their
10 assets, directly impacts the settlement agreement which
11 requires a joint process. There is no joint process in
12 connection with Ms. Tilton's resignation at all of these
13 portfolio companies. It actually directly impacts that
14 process.

15 Second, the monetization procedures order which,
16 again, requires a joint process and court imposed deadlines
17 to get things done specific to this company. Finally, Judge,
18 the transition order which deals with the transition of
19 ownership and control to the debtors consistent with the
20 resignation letter that she filed.

21 So, from the debtors' perspective, Judge, you have
22 jurisdiction over Ms. Tilton and the Ark entities. They are
23 Patriarch stakeholders under the settlement agreement. We
24 went -- you decided that on February 6th. You have authority
25 to enforce your orders. We are now one month removed from

1 Ms. Tilton's resignation, two months removed from the trial
2 that we had with you in February and Ms. Tilton is telling
3 you she needs a couple of more months to make a decision,
4 just to make a recommendation with respect to a manager.

5 The debtors respectfully request that you exercise
6 jurisdiction over Ms. Tilton and the Ark entities, that you
7 have the authority to do that under three orders of this
8 court regarding the settlement agreement, the monetization
9 procedures order and the transition order. The debtors are
10 prepared to lead the process with respect to this company,
11 but you required, and there is no contest with respect to
12 Paragraph 6 of the transition order that you entered on the
13 30th, you required Ms. Tilton to act in good faith and
14 reasonableness in connection with the transition of ownership
15 and control.

16 What we have, Your Honor, is we're a month removed
17 from this process. The debtors immediately made
18 recommendations with respect to the portfolio companies. She
19 immediately -- they did it on March 23rd before they filed
20 their motion, they did it on March 31st the day after you
21 ruled. And Ms. Tilton was a month removed from the hearing
22 and from Ms. Tilton's resignation. And we still don't even
23 have a candidate, Judge. And we have no commitment to get
24 one in the short term.

25 We think that Paragraph 6 drives Your Honor's

1 ruling. We think that you have jurisdiction, as I said, with
2 respect to these entities. They're all controlled by Ms.
3 Tilton anyway, but the good news is they're covered as
4 Patriarch stakeholders in the settlement agreement. The
5 orders that you enter have to have integrity and they have to
6 have meaning.

7 From the debtors' perspective you have the right,
8 you have the authority and you have the basis to, one,
9 determine that Ms. Tilton has, in fact, resigned this company
10 and not reinserted herself or, you know, taken back her
11 resignation, but more importantly, Judge, that the debtors
12 are the right party to lead the process forward with that
13 company when the clock is ticking on the timeline that you
14 set in the monetization procedures order.

15 I have nothing further, Your Honor, unless you
16 want to beat me up some more.

17 THE COURT: I just struggle because you filed your
18 adversary proceeding seeking, in part, exactly the relief
19 that you obtained through the resignation letters as we sit
20 here today. So, what did you expect was going to happen if
21 you obtain that relief in connection with the joint
22 monetization process --

23 MR. NESTOR: Your Honor --

24 THE COURT: -- because I'm struggling -- let me
25 back up, I want to continue my thought which is because I'm

1 struggling with the idea that this relief is necessary to
2 enforce my order when I have not concluded that Ms. Tilton
3 has resigned solely to thwart my orders unless I should hold
4 her in contempt or should enforce the terms of those orders.
5 And you provided me no other clarity under Delaware state law
6 as to why I can force or somehow resolve this deadlock.

7 I will be honest with you because there was law
8 cited I did the dangerous thing and went on Westlaw and I
9 found that this is not necessarily the remedy the Delaware
10 Courts impose when there is a deadlock, okay, because
11 judicial dissolution is the remedy.

12 MR. NESTOR: Either that or -- there are other
13 remedies as well, Judge, but from the -- again, this is a
14 court of equity and we are operating under orders of this
15 court. At this point I'm not sure we care why it happened.
16 It doesn't have -- there are facts in the record,
17 uncontroverted, that we think drive the result we're seeking.

18 One, Ms. Tilton resigns at all companies. Made
19 the representation to us, to you and to the portfolio
20 companies that she was resigning at all of these portfolio
21 companies.

22 Second, there is a vacancy here at this company.
23 And there is a deadline that's been prescribed by Your Honor
24 in connection with a process, again, the record is clear,
25 that has been going on for more than a year, but there is a

1 deadline that has to be achieved with respect to that
2 portfolio company.

3 Third, the debtor -- this is a debtor in a Chapter
4 11 case pending before the court who recommend itself, its
5 professionals, its principals, as the parties to lead that
6 process. Over the next couple of months there's not much
7 time left.

8 I understand where you are coming from, Judge.
9 And I would say that if Ms. Tilton is willing to stipulate to
10 judgment on all of the relief set forth in the complaint that
11 we filed that would resolve, actually, some of the issues
12 with the other portfolio companies because she purported to
13 give herself, you know, the sole exclusive right. She
14 contracted with herself to give her those remedies.

15 So, if she is prepared to consent to all of the
16 relief we've sought in that adversary proceeding we're happy
17 to document that, but with respect to this company, Judge,
18 from the debtors' perspective we have a settlement agreement
19 which requires a joint process. She acted unilaterally to --
20 again, I'm not saying that was the intent, but it effectively
21 kept significant doubt and delay over that process. The same
22 goes for the monetization procedures order. It reaffirmed the
23 joint process and set deadlines. The unilateral, without
24 notice, resignation necessarily imposes uncertainty and delay
25 in connection with that process.

1 Third, the transition order. I guess the question
2 is you ordered Ms. Tilton to work reasonably and in good
3 faith to transition ownership and control of the portfolio
4 companies to the Zohar's. In this case the Zohar's have
5 suggested themselves as the party who will take ownership,
6 leadership, control and responsibility for this entity. And
7 Ms. Tilton, without detailing why that is not a proffer has
8 objected. She hasn't come forward in the last 30 days with a
9 replacement candidate for this company. Instead, she told
10 you, us and everyone else that she needs another four to six
11 weeks from last week to be able to make that decision.

12 So, from the debtors' perspective we don't believe
13 that the negotiation on this company is in good faith. We
14 don't believe that it's reasonable and we think that you have
15 the authority, you have the jurisdiction to enter an order
16 directing her to do this, just as you would if you were
17 directing a sale of the portfolio company. It's the same
18 issues we dealt with on February 6th. If Ms. Tilton was not
19 doing something that you thought needed to be done you said
20 you have the authority over her objection to take action to
21 make her do the right thing.

22 In this case, Judge, with respect to this company
23 we're going to be caught in limbo for an indefinite period of
24 time and we're going to be having this same argument two
25 months from now.

1 THE COURT: Okay. Thank you.

2 MR. SHORE: Your Honor, this is Chris Shore. May
3 I be heard very briefly on behalf of Mr. Farnan?

4 THE COURT: Yes.

5 MR. SHORE: For the past, I'd say, nine months now
6 the court has been moving on a very deliberate series of
7 steps to get a solution to the problem we had last August
8 which is companies that were -- debtors in bankruptcy whose
9 interests in companies were not getting better with age and
10 no visible path to getting to closure.

11 The debtors invested a great deal of money in
12 litigation and the court invested a great deal of time in
13 coming up with a solution. The solution was to use the
14 settlement agreement to obtain jurisdiction over Ms. Tilton
15 and the portfolio companies that would extend until all the
16 assets are sold or the parties were paid in full and the
17 court found, in a contested hearing, that it had jurisdiction
18 over Ms. Tilton and the Patriarch parties to compel the sale
19 of the portfolio companies including the portfolio companies
20 in which the Patriarch entities, like Ark, held a minority in
21 stockholding interest. That is the whole company could be
22 sold and we then had a discussion about how we might have to
23 drag in third-parties through the drag provisions in the
24 shareholders agreement so that we could get to a sale.

25 I'm not going to repeat the argument. Once

1 resigned a director or officer can't reappointment
2 themselves, it has to be done through valid corporate action.
3 The question here, with respect to this portfolio company, is
4 what do we do about a new manager. As it is right now the
5 status quo is that the court has been divested of
6 jurisdiction to compel anybody to sell this portfolio
7 company. That is if the court is going to conclude that it
8 does not have jurisdiction to compel the minority shareholder
9 here to elect a director.

10 It will be a, from Mr. Farnan's perspective, giant
11 loophole in the monetization order and the process that led
12 up to it. That is on the day before she resigned the court
13 could compel, as Mr. Nestor said, the actual sale of those
14 interests. And to that would be could compel the minority
15 shareholder to take the actions necessary to cause the sale
16 if it required a shareholder consent, it required a
17 shareholder meeting. None of that could be done.

18 Its Mr. Farnan's perspective that both he and Ms.
19 Tilton are personally obligated under that monetization order
20 to take certain actions and proceed in a certain way. It's
21 Mr. Farnan's position that Ms. Tilton did not remove herself
22 from the jurisdiction of the court to compel moving forward
23 with the monetization process. While we accept that
24 commitments have been made about when things are going to get
25 done it needs to be very clear that as part of the

1 monetization process, if Ms. Tilton is going to resign, she
2 needs to get a replacement manager in there. It cannot be a
3 veto by delay and it cannot be an unreasonable veto because
4 the monetization or the transition order requires good faith
5 cooperation.

6 As it stands right now Ms. Tilton, in her papers,
7 has not articulated any reason why Z-III can't be the
8 replacement manager here. And just as if the court could
9 compel the Ark entities to vote their shares in favor of a
10 transaction the court has the power, under the existing
11 monetization order to compel or to put a manager in place who
12 can effectuate the monetization process or, as I said, this
13 just ended up being a unfortunate waste of the debtors'
14 scarce resources and the court's scarce resources in working
15 up to this. I do not believe that the court built into its
16 order that kind of loophole, but if it is we're going to have
17 to do something to fix it because we are, from Mr. Farnan's
18 perspective, dead in the water on the monetization unless and
19 until we get a manager in there.

20 THE COURT: Well, Mr. Shore, I certainly
21 everyone's frustration and I certainly understand the
22 concerns you have just articulated about the inability of the
23 parties to move forward with respect to the monetization of
24 this specific portfolio company and perhaps others.

25 And assuming I have jurisdiction, I guess the

1 question that I have and that I did not articulate properly
2 is what is the standard by which I compel Ark to execute the
3 written consent, given that the LLC agreement requires
4 unanimous consent under Delaware State law? Because there
5 was no case law cited to me in any of the briefing as to the
6 standard and Mr. Nestor highlighted that there could be other
7 remedies under Delaware State law, rather than general
8 dissolution, but no one cited the standard.

9 This is a similar are issue that I asked the
10 parties when we were going to compel the sell because there
11 were two sort of hoops there we had to jump through --
12 jurisdiction, but then in addition, what would be the
13 standard by which, We, we compel a sale, and of course we
14 never got there.

15 So, what is the standard by which I would compel
16 Ark to execute the written consent?

17 MR. SHORE: Well, I think there are a couple of
18 standards that are out there. The first thing that has to be
19 found, I think, in the emanation of the Court's jurisdiction
20 comes from the fact that the monetization order personally
21 required Ms. Tilton to take certain actions. That she is
22 incapable of taking them and she's incapable of taking them
23 because she made herself incapable of taking them.

24 Not a question of knowing or willful. Knowing or
25 willful goes to the extent of the remedy, but Ms. Tilton has

1 placed herself in contempt of the order and the Supreme Court
2 has clarified, it doesn't need -- you don't need to have a
3 subjective belief that you're violating the order. She has
4 made herself incapable of carrying out the monetization
5 processes because in order to do that, she needs to be a
6 manager.

7 So, that gives the Court wide range in
8 jurisdiction to fashion a remedy and it is up to the Court's
9 equitable jurisdiction to do that. And in this instance, the
10 fix for Ms. Tilton removing herself from the managerial
11 position to carrying out the monetization order, which is not
12 permitted in the monetization order, and I can assure you
13 that if Mr. Farnan were to resign, he would come to the Court
14 before doing so and ask to modify the monetization order and
15 address this ahead of time, rather than taking a precipitous
16 action the day after the Court entered the order.

17 But that gives the jurisdiction to the Court to
18 fix it. If Ms. Tilton wants to remain in contempt by failing
19 to executed Ark consent, then the Court has a number of other
20 remedies on which it can rely to compel that action. But as
21 it stands right now, we're not talking about the economics of
22 her interest, the economics of her interest or Ark's interest
23 in the entity are going to be protected by the manager put in
24 place, who will be charged with getting the right price under
25 the circumstances.

1 What we're talking about the is governance piece;
2 the piece which is, there needs to be somebody in place and
3 the shareholders have the right to pick that person.

4 All you would be doing by ordering --

5 THE COURT: So, my question --

6 MR. SHORE: -- by ordering Ark to or Ms. Tilton to
7 execute the Ark consent would be, quote, depriving her of the
8 opportunity to pick her manager of choice.

9 And as I started, and I'll finish here --

10 THE COURT: (Indiscernible) interrupt you.

11 MR. SHORE: Sure.

12 THE COURT: Okay. Go ahead.

13 I'm sorry. No, complete your thought.

14 MR. SHORE: Where I started was, if there was some
15 articulation from Ms. Tilton as to why Z-III was not an
16 appropriate manager to carry out the acts that are required
17 under the order, which is putting that portfolio company up
18 for sale and closing the sale, that might be a basis for
19 saying the remedy that you would require me to execute this
20 consent would be inappropriate or unfair or unjust or
21 inequitable. But the only argument that we've received to
22 date as to why Z-III is not appropriate is that Z-III can't
23 run the business of this portfolio company over time, but
24 that's not an appropriate purpose.

25 So, the interest that is trying to be protected

1 here is not a legitimate one, such that it is within the
2 Court's equitable power to get Ms. Tilton to sign the Ark
3 consent.

4 THE COURT: And under Delaware State law, the
5 Delaware Courts justify their decision to break a deadlock in
6 favor of one party over the other under that standard.

7 MR. SHORE: Right. But the issue --

8 THE COURT: What is the standard by which the
9 Delaware Courts breaks the deadlock?

10 MR. SHORE: I don't know the answer to that. I
11 would did he have to my Delaware corporate brethren.

12 But my issue or my point is that the Court has the
13 point to enforce its orders. If the Court ordered somebody
14 to deliver or to sell the company and Ms. Tilton didn't sell
15 the company, right, this violation of the order once entered,
16 then it's not a point to say you can't do that under State
17 law. Your time to raise that issue was before the order was
18 entered.

19 This order was entered requiring her to take
20 certain actions. She has taken herself out of the box on it,
21 right; she's made herself incapable of carrying out Your
22 Honor's order. So, Your Honor is authorized to enter an
23 order which requires Ms. Tilton not to benefit -- and that's
24 what we're really talking about here -- benefit from the fact
25 that she is in violation of Your Honor's order.

1 THE COURT: Well, I want to tease that out a
2 little bit because even assuming that the replacement
3 manager, let's just assume for purposes of this discussion,
4 that the replacement manager of company one is someone who
5 does not want to sell the companies don't I have the
6 authority over Zohar III and Ark II under the settlement
7 agreement to force you to comply with my joint monetization
8 order?

9 In other words, don't I have jurisdiction over
10 Ms. Tilton and Ark, based on their agreements or based on
11 their holding of the equity?

12 MR. SHORE: Okay. So, one way this could play out
13 and it would be a very difficult way, right, is the
14 monetization -- a new manager comes, in carrying out your
15 example, who doesn't want to sell. Ms. Tilton shops the
16 items for a director who has never sold the company and
17 decides that's who I want. And we go forward in the process
18 and offers come in and Mr. Farnan says, Yes, and replacement
19 manager says, No.

20 We could then go through a process of dragging Ark
21 in to have Ark and Zohar III issue proxy statements at that
22 point, right, either removing that manager or a shareholder
23 consent, which overrides that manager's decision to sell.
24 And that would work and that would be messy and it would take
25 a lot of time and probably can't be done within the time

1 frames that we were talking about now months ago, which is
2 holding an APA open while that happens. That's probably not
3 workable.

4 But more difficult to deal with in the process is,
5 what are we doing while that manager is in place who is
6 dealing with the portfolio companies, dealing with the
7 investment bankers, holding these meetings, are we now
8 modifying? I guess we modify the order, the monetization
9 order to make that person have to attend the status
10 conferences and make periodic things and we make those
11 issues, right?

12 But all during that time, the Court has no
13 jurisdiction over that manager. The jurisdiction, which the
14 Court -- going back to the beginning -- started with, was the
15 jurisdiction under the settlement agreement. That's how we
16 got to the monetization order. A manager who comes in, the
17 Court -- I don't know, maybe, but it would have to be clear
18 at the outset -- but I don't know how the Court writes an
19 order that says, Manager, you didn't show up at the status
20 conference. You've got to show up at the status conference.
21 Manager, you didn't deal with the investment banks and that
22 you've got to deal with the investment banks.

23 What the debtors are trying to do here is address
24 that issue up front and, again, the problem that's been
25 created is of Ms. Tilton's making. She is the one who

1 stepped out and under the appropriate State Court law or
2 State law is required to have the shareholders' meeting and
3 the directors of all the shareholders reappointing herself
4 before she gets re-appointed. So, we're not doing any of
5 that.

6 So, I guess the looking four or five steps down
7 the line, it's critical to let's just get Ms. Tilton out,
8 let's get new people in, and the Court, I would just say, the
9 Court has the jurisdiction to protect its jurisdiction. It
10 has jurisdiction to enforce a process and that jurisdiction
11 is being subverted by the resignations.

12 THE COURT: Okay. Thank you very much. I
13 appreciate the clarification of your point.

14 MR. SHORE: Thank you, Your Honor.

15 THE COURT: Thank you.

16 Okay. Why don't I hear from the Patriarch
17 parties.

18 MS. LOSEMAN: Thank you, Your Honor. For the
19 record, it's Ms. Loseman again.

20 Frankly, Your Honor, we're confounded. I mean,
21 Ms. Tilton gave the debtors what we thought they wanted: a
22 concession that the Zohars own the equity recorded in their
23 name and whatever rights come with that equity. And she can
24 still do no right.

25 If anything, Ms. Tilton is going out of her way to

1 cooperate in the transition out of respect for the Court's
2 orders here. There's no record whatsoever that she's
3 obstructing the sales process or even operation of the
4 company and that's because she is not and the debtors'
5 business professionals know it. She was performing as
6 manager of portfolio company one and that performance was
7 apparently unobjectionable up to the date of her resignation.

8 And now she's doing the same thing since her
9 resignation was rescinded, performing as manager. But now,
10 suddenly, that's objectionable.

11 Where is the violation of any order?

12 There is no violation. There is no support for
13 any suggestion that Ms. Tilton has violated any of this
14 Court's orders.

15 This isn't, in fact, about Ms. Tilton as
16 continuing to perform as manager through a transition period.
17 This isn't even about obstructing a sale. The Zohars and the
18 Patriarch stakeholders' financial interests in this company
19 are aligned: find a sale at the highest value possible so
20 that everyone can collect on their interests in the company.
21 This, instead, is about invalidating the Patriarch
22 stakeholders' equity interests in voting in a new replacement
23 manager.

24 Let me just address, briefly, the rescission
25 point. We believe that the rescission is effective. The

1 rescission was delivered to the company, itself. That
2 rescission was acknowledged and accepted by the chief
3 executive officer. The company, Ms. Tilton, Mr. Katzenstein,
4 all have continued to operate consistent with the
5 effectiveness of the rescission and relied on the company's
6 acceptance of that rescission. We think it's a mixed
7 question of law and fact, but we believe that there's ample
8 support for a ruling that the rescission was effective.

9 But let me get right to the heart of it. I think
10 Your Honor is correct, the debtors are conflating the
11 rescission issue and the voting rights issue. Ms. Tilton did
12 not object to Zohar III in her role as transitional manager
13 at the company. She objected as an equity earner.

14 Counsel, I think, at the beginning of this
15 argument said it pretty clearly: The basis for debtors'
16 complaint on March 26th, which Ms. Tilton took it as an
17 expression, a genuine expression of concern for the companies
18 and a need for leadership through a transitional period. In
19 fact, Ms. Tilton, (indiscernible) her read of that -- of
20 debtors' complaint on March 26th was perhaps wrong because
21 debtors' could believe made it pretty clear, that complaint
22 was not an invitation for Ms. Tilton to help; instead, that
23 was a complaint that there was a need, there was some
24 justification for the debtors to take control of the company
25 without giving any effect to the minority equity interests.

1 Whether Ms. Tilton remains as manager or not
2 during its transition period, the voting rights in portfolio
3 company one and the applicability of the relevant provisions
4 in the LLC agreement are what they are, regardless of whether
5 Ms. Tilton remains the company's manager or not through
6 transition, a vote needs to take place, consistent with the
7 terms of the LLC agreement to elect a new manager. And let
8 me be clear, Ms. Tilton wants a new manager. She is not
9 seeking to elect herself to the position permanently.

10 Debtors, here, make no mistake about it, ask for
11 extraordinary relief. They asked this Court to render
12 invalid the voting rights associated with Ms. Tilton's
13 approximately 17 percent equity interests in portfolio
14 company one so that they may unilaterally appoint Zohar III
15 as the manager. They asked this Court to ignore the
16 governing LLC agreement. They asked this Court to ignore
17 applicable Delaware State law and consequently ignore the
18 Patriarch stakeholders' rights.

19 And it's not as if Ms. Tilton asks much here. She
20 merely asks that the debtors propose an independent
21 candidate, ideally with industry experience and that she
22 would do the same. She's in that process. There's a lot, of
23 course, going on in the world right now. She is working to
24 identify appropriate candidates as quickly as she possibly
25 can, but she also asked and expected the debtors would do the

1 same in the hopes that they could continue working together
2 and negotiating to find an appropriate replacement manager.

3 The debtors haven't even done that. Instead, they
4 came immediately to the Court asking it to ignore the LLC
5 agreement, ignore Delaware law, ignore Chancery Court
6 authority, and simply appoint Zohar III as the manager,
7 claiming that Ms. Tilton agreed to abdicate her rights by
8 writing very generally in her resignation letter that she
9 would cooperate in the transition process. The debtors'
10 arguments are without any legal justification or factual
11 support.

12 Let me address, first, the other absence of any
13 legal justification for the extraordinary relief debtors
14 request. The debtors who pointed to no legal justification
15 for what they ask this Court to do and that's because there
16 is none. We certainly have not seen it and the Court has
17 noted there are remedies under State law if, in fact, the
18 equity holders have reached a deadlock, but those remedies do
19 not include this Court invalidating the Patriarch
20 stakeholders' right to participate in the election of a new
21 manager under the terms of a new LLC agreement.

22 They do not point to any provision in the
23 settlement agreement where Ms. Tilton abdicated the Patriarch
24 stakeholders' rights as equity owners and lenders to the
25 portfolio companies and they do not cite any such provision

1 because it does not exist. Ms. Tilton never agreed to give
2 up the Patriarch stakeholders' equity and best interests in
3 the companies.

4 And the Court's order implementing the settlement
5 agreement did not, of course, purport to resolve ownership or
6 control over the portfolio companies; in fact, it purposely
7 avoided that question and preserved the then, *status quo*. It
8 was only Ms. Tilton's resignation and agreement that the
9 Zohars owned the equity recorded in their name and whatever
10 rights go with that, that led us here.

11 The order implementing the settlement agreement
12 did not require Ms. Tilton to forego her personal voting
13 interest. She is not, for example, blocking a sale of the
14 company. There is nothing in the orders to support
15 Mr. Shore's newly articulated theory of this Court's
16 authority for imposing the radical relief they request here.

17 The selection of an independent manager does not
18 impact the monetization of this company and there's no record
19 upon which the Court could find anything remotely approaching
20 supposed contempt of any order whatsoever. Not agreeing to
21 allow Zohar III to ride roughshod over the Patriarch
22 stakeholders' interests is not contempt. This Court's
23 equitable jurisdiction simply does not reach so far,
24 particularly where there's no factual record to suggest any
25 of this is impacting the sale process in any way whatsoever.

1 They do not, of course, point to Delaware law for
2 legal support, nor could they, for the reasons I noted and
3 they can't point to any statement in her resignation letter
4 where she agreed to abdicate her rights. Again, that is
5 because it simply does not exist.

6 Ms. Tilton only gave control over that which the
7 Zohars now own, the equity recorded in the Zohar's name.
8 Ms. Tilton did not express any intent to abdicate the
9 Patriarch stakeholders' equity and debt interests in her
10 resignation letter; instead, the debtors in their papers
11 point to a general remark in the resignation letter that the
12 Zohars control the future of the portfolio companies and that
13 she would reasonably cooperate with new leadership, your new
14 leadership to accomplish the transition.

15 The debtors are stretching this language beyond
16 all sense and reason. With regard to the vast majority of
17 the portfolio companies, for example, where debtors now own
18 100 percent of the equity, because 100 percent of the equity
19 is recorded in the Zohar's name or where they own majority
20 rights, given the Zohar equity, with simple majority voting
21 provisions, the future of the companies, most of the
22 companies are now in the Zohars' hands and, indeed,
23 Ms. Tilton has cooperated with the debtors to accomplish a
24 smooth transition, including, even with respect to the
25 largest portfolio company. But those general remarks in her

1 resignation letter cannot be converted into an abdication of
2 the Patriarch stakeholders' rights. There's simply no legal
3 support for such an argument.

4 Now, let me address the purported factual
5 justification. Debtors suggest an emergency exists and I
6 quote from the second supplement:

7 "Portfolio company one and its officers are
8 without direction and unable to enact the mandate under the
9 final monetization order to effectively proceed with the
10 ongoing sale process, despite active and ongoing bidder
11 discussions, so that the company has been left rudderless
12 when informed, decisive actions important or that absent a
13 manager, portfolio company one has somehow been hampered in
14 executing the Court's final monetization order."

15 These are quite the statements to be made without
16 any every other support whatsoever. Debtors submitted no
17 declarations, nothing from Mr. Katzenstein or even the
18 company's management team in support of those statements; in
19 fact, Ms. Tilton has testified to the contrary, that since
20 her limited rescission, it has been business as usual or as
21 usual can be under the circumstances of the COVID-19 crisis,
22 and that that company is not left rudderless. It is actively
23 and successfully negotiating a difficult period.

24 Once more there, is no sales -- no yields to be
25 done right now. While we believe prior bidders remain

1 interested, there are unfortunately no active or ongoing
2 bidder discussions, no LOI has been submitted, and it is
3 unlikely one is immediately forthcoming, given the
4 circumstances of the broader economic environment. But
5 that's not because of the absence of an independent manager
6 to replace Ms. Tilton. We believe Mr. Katzenstein, if
7 permitted to be cross-examined, would have to agree with
8 these points. That's why we believe that the relief
9 requested by debtors' second supplement cannot be ordered
10 without an opportunity to present this testimony and cross-
11 examine Mr. Katzenstein.

12 So, what is this issue really about? What is the
13 second supplement really about in the fight over Zohar III as
14 the manager?

15 The debtors want their nominee Zohar III and they
16 refuse to negotiate. They infer, without evidence, that
17 Ms. Tilton is holding out a vote in favor of Zohar III as
18 manager in order to somehow obstruct the process, that she
19 has no legitimate interest in voting her shares in favor of
20 an independent manager; again, quite the claim to be made
21 with no evidentiary support whatsoever.

22 But let's be clear, the Patriarch stakeholders
23 have debt and equity interests in portfolio company one.
24 Upon the consummation of a sales transaction, Ms. Tilton
25 expects those stakeholders to be retained and receive what

1 other interests they are due. She is concerned that Zohar
2 III's manager will obstruct payments rightfully due to the
3 Patriarch stakeholders and she has a right to be concerned.

4 The ABL lender at the portfolio company, Bardin
5 Hill, is also the controlling noteholder in Zohar III. They
6 have taken steps with respect to the ABL to shut out the
7 Patriarch stakeholders from collecting --

8 MR. NESTOR: Your Honor, objection. This is
9 testimony. This is testimony. This is not -- this is a non-
10 evidentiary hearing. There's no evidence of this.

11 MS. LOSEMAN: Your Honor, if I may?

12 THE COURT: Yes.

13 MS. LOSEMAN: This is a proffer of what the
14 evidence would show were we permitted to call Ms. Tilton on
15 the stand and permitted to cross-examine Mr. Katzenstein.

16 THE COURT: I understand, but this is not an
17 evidentiary and to the extent that I feel like I can't make a
18 decision at the end of this, then I will allow an evidentiary
19 hearing to go forward. So, I understand your position that
20 evidence is necessary, but I don't think we need to go any
21 further.

22 MS. LOSEMAN: All right. Suffice it to say, Ms.
23 Tilton has a right to be concerned as Zohar III as a manager
24 of the company. Her withholding of the Patriarch
25 stakeholders' consent to Zohar III as a manager of the

1 company is not without foundation or without basis, which we
2 would present if we were permitted an opportunity to do so.

3 In light of this backdrop, Ms. Tilton feels it's
4 prudent that an independent manager be appointed and she,
5 therefore, exercised her voting rights, consistent with that
6 belief. Instead of even attempting to engage with Ms. Tilton
7 and identify an independent candidate, the debtors just run
8 to court; this should not be the countenance.

9 Now, I hope that the equity holders in the
10 portfolio company are not deadlocked. If they are, there are
11 applicable State law remedies and the parties will seek what
12 remedies they feel we need to seek. But there is no factual
13 support, there's not even logical support for the outlandish
14 conspiracy theory now concocted by debtors that Ms. Tilton
15 somehow seeks to install an independent manager for the
16 purpose of avoiding the Court's timeline order and deadline
17 to sell the company; again, that's quite the theory to set
18 forth without any evidence.

19 But let's be clear, Ms. Tilton is not attempting
20 to delay the sales process. She has no intention of delaying
21 the sales process and she did not believe that the sales
22 process needed to be delayed by the appointment of an
23 independent manager.

24 The theory is also illogical, given the Patriarch
25 stakeholders' financial interests in the company. The

1 Patriarch stakeholders' financial interests are entirely
2 aligned with the debtors; let's get this company sold so that
3 the Patriarch stakeholders can recoup their investment, as
4 well.

5 In any event, it is entirely unclear to me how any
6 delay could be accomplished with an order requiring the sale
7 of the company by a date certain in place. The Court has
8 ordered what it has ordered and Ms. Tilton remains committed
9 to accomplishing a sale by that deadline; Ms. Tilton, of
10 course, would testify to the same.

11 The election of an independent manager to shepherd
12 the company through its sales process, someone who will call
13 balls and strikes, with respect to the various stakeholders'
14 interest in that company is all Ms. Tilton has denied, and
15 allowing the negotiating process to play out over the next
16 one to two months would leave the company with a new manager,
17 at most, approximately two months prior to the Court-ordered
18 sell-by date.

19 There's no record, there's no logical inference
20 that can be drawn that a new independent manager with
21 industry experience could not oversee the completion of the
22 sales process in that time; in short, there's simply no
23 justification for the extraordinary relief debtors request
24 here. They have not pointed to a single thing the debtors
25 prefer the company do that it cannot, given Ms. Tilton's

1 reasonable request that the parties attempt to agree on an
2 independent manager.

3 The relief debtors seek is consistent with their
4 pattern of prematurely and unnecessarily seeking Court
5 intervention on an incomplete and even misleading factual
6 record. While we recognize the Court cannot order the
7 debtors to stop wasting estate resources with these ill-
8 developed allegations and conspiracy theories, we ask that
9 debtors' allegations lodged at Ms. Tilton be limited to those
10 that can be supported by sworn declaration or documentary
11 evidence.

12 As I suggested to the Court in February, the
13 lawyers need to get out of the way so that these sales
14 processes can move forward. Debtors' counsel's continual
15 attacks against Ms. Tilton unfortunately have the effect of
16 requiring Ms. Tilton to respond through her counsel and
17 filings with the Court, unnecessarily taking up everyone's
18 time and distracting the parties and taking away resources
19 from the work that has been ordered by the Court: Sell the
20 companies.

21 The Court should follow its instinct here and let
22 the process play out in terms of the election of a new
23 manager under applicable State law and the governing
24 documents. Thank you, Your Honor.

25 THE COURT: Thank you.

1 MR. NESTOR: Your Honor, it's Mike Nestor. Might
2 I be heard briefly with respect to three points?

3 THE COURT: Yes.

4 MR. NESTOR: First of all, I heard no legal basis
5 regarding the rescission argument; it's contrary to the
6 documents and there's no basis for the alleged rescission.
7 Ms. Loseman can't rely on the LLC when it suits her and then
8 not rely on it when it doesn't.

9 From our perspective, the resignation letter and
10 Your Honor's order of March 30th has to have some meaning.
11 The reason that we're not limited by State Court is because
12 we're in bankruptcy and in bankruptcy, you have equitable
13 powers that exceed those that are available outside of your
14 courtroom. And to look solely to what remedies would have
15 been available in State Court would limit the ability of Your
16 Honor to enforce your orders.

17 And so, the resignation letter and the Court order
18 have to mean something and if we look at what happened,
19 putting all the -- I mean, I don't even want to say
20 "conspiracy theories" because we don't have any -- we're
21 just -- we're looking at the uncontested facts here. Is
22 there a gap in the management at the company? We would
23 submit there is.

24 Is the debtors' choice of itself reasonable? This
25 is an entity and representative's that are accountable to

1 Your Honor.

2 Third, is Ms. Tilton's rejection of the debtor and
3 refusal to submit a candidate 30 days after her resignation
4 reasonable? And not only that, not expressly saying she
5 doesn't intend to do it for a couple more months.

6 And does the resignation, the refusal to consent
7 to the debtors' representative, and the refusal to even
8 submit a candidate a month after her resignation violate
9 Paragraph 6 of your order, Judge?

10 We come back to the transition order where you
11 requested -- you ordered good faith transition of ownership
12 and control. So, from the debtors' perspective, your orders
13 have to mean something. Ms. Tilton's commitments, I went
14 through each of them, have to mean something. She said --
15 that letter was sent to you. It was in the pleadings. It's
16 got to mean something.

17 So, from the debtors' perspective, you have the
18 authority. You have -- and both -- in fact, I looked them.
19 Both sides cite the exact case law in terms of you have
20 jurisdiction to interpret and enforce settlement agreements
21 and accompanying orders approving settlements. You have the
22 authority to do that.

23 We have a settlement agreement that was the
24 culmination of litigation in this case. We have your
25 determination that you have jurisdiction over Ms. Tilton and

1 these very Ark entities as Patriarch stakeholders, under the
2 settlement agreement. You have the monetization procedures
3 order which set forth a timeline and required joint process
4 going forward, which is imperiled by the resignation without
5 notice and the failure for a month to provide a candidate to
6 take ownership of the company, to take leadership of the
7 company with the deadline fast approaching. And we have your
8 transition order which states that Ms. Tilton has to
9 negotiate in good faith and reasonableness regarding the
10 transition of ownership and control.

11 So, from the debtors' perspective, again, the
12 orders have to mean something. Ms. Tilton's letter, which
13 forms a basis of this entire dispute, her representations to
14 Your Honor have to mean something and we can't be limited by
15 State Court because we're not there; we're in Bankruptcy
16 Court. You have broad equitable power and you have the
17 ability to fashion remedies that are focused on enforcement
18 of your orders.

19 So, again, from our perspective, there is a gap.
20 The debtors' choice is completely reasonable since we're
21 accountable to you. Ms. Tilton has rejected that and failed
22 to put another candidate in and has refused to do that for at
23 least a couple more months and that, necessarily, will impact
24 the sale process.

25 So, we think that you have more than enough

1 authority under your orders with respect to this one company
2 to compel Ms. Tilton to do that, which we think needs to
3 happen just to comply with your order.

4 And I would say you have done this before. You
5 have determined you have jurisdiction to compel a sale. You
6 have determined that you can determine the timing of the sale
7 and the guidelines to the sale. So, we're asking you to
8 continue to enforce your orders, exercise your judgment, and
9 keep these processes on track, specifically, with respect to
10 company number one.

11 THE COURT: Okay. Thank you, Mr. Nestor.

12 MR. SHORE: Your Honor this, is Mr. Shore. May I
13 be heard on that?

14 THE COURT: Yes, Mr. Shore. Go ahead. Sorry to
15 cut you off.

16 MR. SHORE: Let me make one macro comment here
17 because it keeps coming up at these hearings. There's a
18 little bit of gaslighting going on here where the debtors
19 come forward and explain the problem and the response on the
20 other side is, You're seeing ghosts, you are overreacting,
21 you're coming up with wild hypotheticals.

22 I'm just going to remind the Court that on one
23 side, there is Ms. Tilton who has, for a decade, held out on
24 the sale of these companies to great effect in many courts,
25 and on the other side you have a raft of professionals who

1 have been in your court and other courts, you have an
2 independent director, and you have a CRO, who you know,
3 you've heard him testify. At some point, the Court is either
4 going to have to accept that the reality perceived by those
5 people is wrong and they are hysterical or what is going on
6 here is a process, which we believe of making provocative
7 statements, doing provocative things, walking them back
8 before a hearing, or doing things just before a hearing and
9 then coming in and proclaiming that the protagonist in the
10 fight is hysterical.

11 I don't know what to do about that, but from Mr.
12 Farnan's perspective, we talked about it, it's not
13 appropriate in our view to take the independent director and
14 the CRO and accuse them of seeing ghosts. They both came in
15 here long after these loans were made, long after the
16 litigation played out, and they have formed a view about what
17 needs get done, to get the job done that they were both put
18 in place to do and which Mr. Farnan has been ordered to do.

19 Second, the only thing that needs to be addressed
20 right now is the extent to which the Court has jurisdiction
21 to compel Ark to put a director in place. The Court has
22 already found it has jurisdiction to direct Ark to sell the
23 entire company. I'd leave aside, evidentiary or not, the
24 wrong time to be giving your explanation as to why you don't
25 want Z-III as a director is after all the pleadings have been

1 filed and for the first time, make a "proffer" on the record.

2 There was an opportunity for Ms. Tilton, up to
3 today, to come up with an explanation as to why Z-III was not
4 appropriate and under existing rules, quite frankly, she's
5 waived the arguments that there is some other legitimate
6 reason, other than "she wants somebody who can run the
7 company with expertise over the next two months."

8 So, the Court is going to have to decide one way
9 or the other and from Mr. Farnan's perspective, he is very
10 concerned that if the Court finds it doesn't have
11 jurisdiction to compel Ark to execute the consent, it's going
12 to undermine the entire process that was set up to get these
13 companies out of bankruptcy, because we're going to find
14 ourselves in a situation where if you don't have jurisdiction
15 to control that process, the process by which Ark, the party
16 to the settlement agreement, controls the disposition of the
17 asset by saying, essentially, there's an intervening
18 jurisdictional cut that occurs by the appointment of an
19 independent, we're going to be in a morass.

20 Is it certain to have them? No.

21 Is Mr. Farnan or Mr. Katzenstein seeing ghosts
22 when they have concerns about that happening? No.

23 We certainly didn't expect, for example, that
24 someone would take the position after two years in bankruptcy
25 that the Court had no jurisdiction to do anything. It

1 happened. It played out.

2 And so, the time to address the jurisdiction is
3 now. It's not a question of what the State law process is;
4 it's a question of what the settlement agreement and the
5 orders that this Court say about the Court's ability to
6 direct the parties to the settlement agreement to effectuate
7 the purposes of the settlement agreement.

8 Unless Your Honor has any questions, I have
9 nothing further.

10 THE COURT: Thank you, Mr. Shore.

11 MS. LOSEMAN: Your Honor this, is Ms. Loseman.
12 May I briefly respond?

13 THE COURT: Yes.

14 MS. LOSEMAN: Thank you, Your Honor.

15 Let me address, first, Mr. Shore's suggestion that
16 we are somehow gaslighting the Court. That allegation is,
17 frankly, beyond the pale. Remember, this all started with
18 extraordinary allegations regarding Ms. Tilton's provocative
19 statements made in brief that were later disproved by us with
20 evidence and then debtors continue to resist the need for an
21 evidentiary hearing. They even suggested evidence wasn't
22 necessary for this hearing regarding the second supplement
23 and they continue to resist the presentation of evidence
24 while, with the same breath, claiming that Ms. Tilton is
25 somehow trying to delay the sale of this company.

1 From our perspective, it's not appropriate to make
2 outlandish allegations regarding Ms. Tilton without evidence
3 or without giving her an opportunity to defend herself in
4 sworn testimony.

5 Let me just make a few brief points regarding
6 comments by Mr. Nestor. The companies, let's remember, are
7 not in bankruptcy and there's not dispute on this. This is
8 made clear, even in the settlement agreement. The internal
9 affairs and the affairs of management of the portfolio
10 companies are not before this Court.

11 The sale of the companies, the ability to transact
12 with a third party and interest into a sales agreement,
13 that's clearly what this Court has jurisdiction over, but
14 there is no record to conclude here that this internal
15 control matter, how a new manager is to be elected by the
16 existing equity holders in portfolio company one, there is no
17 record to conclude that this Court has authority to
18 essentially override existing LLC agreements and applicable
19 State law on that question, especially where there is no
20 record to suggest the election of a new manager puts in
21 peril, the sales process or the Court's order, with respect
22 to the sale of portfolio company one.

23 I want to emphasize, we agree, your orders do mean
24 something, but your orders do not mean that debtors get their
25 way whenever they want it without having to live by the terms

1 of an LLC agreement, to which they are now a party. Thank
2 you.

3 THE COURT: Okay. Thank you very much.

4 And I appreciate all the thorough presentation, so
5 why don't I give you a few observations that have evolved
6 while listening to you all.

7 With respect to the last set of comments regarding
8 gaslighting, listen, everyone here has their narratives. I
9 get it. It understand it. And I've been living with them
10 since the case has been reassigned and I take them for what
11 they're worth.

12 With respect to the relief requested in the second
13 supplement of the debtors', I find that I do have
14 jurisdiction (indiscernible) the relief sought directly
15 affects property of the estate; mainly, the debtors'
16 interests holdings in the company, company one; the rights
17 and value related to those holdings; and the rights and value
18 related to their outstanding holdings under the outstanding
19 term loan facility.

20 Also, I believe it's appropriate that I consider
21 the issues, rather than sending the parties to another court,
22 perhaps a Delaware Chancery Court would be another logical
23 forum, but given my history with these cases and the further
24 delay that would be caused if the disputes are restarted in
25 Chancery Court, I do think it's appropriate that I hear and

1 decide the issues.

2 With respect to the first form of relief requested
3 by the debtors that I -- the request that find Ms. Tilton's
4 rescission of her earlier resignation as sole manager of
5 company one to ineffective, I will -- I would be prepared to
6 grant this relief, as the resignations were deemed accepted
7 upon the receipt, as acknowledged by all the parties, most
8 effective at the time, pursuant to the applicable LLC
9 agreement and there's been no case law or provision of the
10 applicable LLC agreement cited to the contrary. And so, as
11 such, portfolio company one currently has no manager.

12 To fill the position, the debtors, through their
13 second form of relief, have requested or asked me to direct
14 Ms. Tilton to execute a written consent on behalf of Ark II,
15 appointing Zohar III as the sole manager of company one. And
16 there's no dispute that to appoint the manager, the LLC
17 agreement of company one requires the unanimous consent of
18 its common members, that's Zohar III and Ark II, and the
19 debtors want Zohar III to be manager and Ms. Tilton has said
20 no and requested potential appointees with relevant industry
21 knowledge who are independent.

22 It's clear unanimous consent has not been reached,
23 but the problem is debtors have provided no legal
24 justification under applicable State law for the relief they
25 seek, which is not readily apparent to me and they say that I

1 can fashion a remedy to enforce my monetization order because
2 of the deadlock reached between the parties; however, a
3 deadlock is not yet here because no attempt to reach a
4 consensus has been made to date so, so far, Zohar III is the
5 only suggested appointee; however, it is clear that
6 Ms. Tilton doesn't agree. That was clear to me before this
7 hearing and it's clear in the papers what she wanted, but it
8 should not take four to six weeks for the parties to be able
9 to find a replacement and, quite frankly, I question the need
10 for an industry expert when there's so many qualified and
11 independent professionals who can serve as manager.

12 So, therefore, I'm going to hold the motion in
13 abeyance for one week and I want the parties to suggest their
14 replacements and try to reach a consensus and you can report
15 back to me through my courtroom deputy as to whether a
16 replacement manager has been selected and if not, I'll decide
17 what the next steps will be.

18 But before we move on to the next matter we're
19 going to discuss today, I want to give a word of caution. I
20 have not made a determination as to the reasons underlying
21 Ms. Tilton's resignation from her position. Based on my
22 observations of Ms. Tilton during the course of the February
23 trial, I have no reason to disbelieve her claim that the
24 resignations were motivated by a desire to preserve the value
25 of the portfolio companies for the benefit of the customers,

1 vendors, and employees.

2 However, I acknowledge that that may not be her
3 only motivation or an argument could be made that that may
4 not be her only motivation and the timing of the resignation
5 gives me great concern and has given me great pause as to
6 whether Ms. Tilton's resignation will be used to further
7 delay or avoid the monetization process. And to me, actions
8 always speak louder than words, so I'm sure I will have a
9 better understanding of why the resignation occurred as we
10 move forward with the monetization schedule.

11 I expect a replacement manager for the company to
12 be selected and the parties to focus on moving the
13 monetization process forward, in light of the new landscape
14 of control and the ownership that has sprung forth as a
15 result of Ms. Tilton's resignation letter. I expect you to
16 act with the understanding that the monetization process is
17 and will continue and that, sadly, any further dilatory
18 actions of the parties in this proceeding may not only
19 destroy value to the debtors' stakeholders, but also will
20 most definitely harm the thousands of portfolio company
21 employees vendors and customers who are so very reliant on
22 the portfolio companies now and into the future in light of
23 the unprecedented economic crisis we are currently
24 experiencing and will continue to experience for an unknown
25 period.

1 I implore you not to lose sight of the many who
2 are dependent on the portfolio companies for their
3 livelihoods, as well as my belief that Ms. Tilton's
4 resignations do not alter the obligations in the settlement
5 agreement to monetize the portfolio companies.

6 And with that, I will adjourn the motion for one
7 week and I expect to hear from you through any courtroom
8 deputy and I will go ahead and enter an order on the motion
9 to amend and make that clarification.

10 And with that, I understand there's a few more
11 non-substantive matters that are on the agenda, with respect
12 to motions to seal. I don't think objections have been
13 raised, so do you need me to rule on those today or can you
14 submit the orders under certification of counsel or
15 certificates of no objection.

16 MR. NESTOR: Your Honor, it's Mike Nestor.

17 Why don't we just end the call and I'll submit
18 them under certification of counsel if that works for you?

19 THE COURT: Unless there are parties that want to
20 be heard on the motions today, that's satisfactory to me.

21 (No verbal response)

22 THE COURT: Okay. Hearing nothing, then let's
23 adjourn this hearing and I'll wait to hear from you in
24 exactly one week. Thank you.

25 MR. NESTOR: Thank you, Your Honor.

MS. LOSEMAN: Thank you, Your Honor.

(Proceedings concluded at 3:04 p.m.)

CERTIFICATE

I certify that the foregoing is a correct transcript
from the electronic sound recording of the proceedings in the
above-entitled matter.

/s/Mary Zajackowski
Mary Zajackowski, CET**D-531

April 23, 2020